

**EXHIBIT A**  
**SECOND DECLARATION UNDER 37 C.F.R. § 1.132**

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**Applicant: **SCHIEK, James**For: **SUPPORT AND UTILITY  
BELT**Serial No. **08/290,678**Filed: **08/15/94**Group No. **3302**Examiner: **L. DVORAK****) CERTIFICATE OF EXPRESS MAIL**

I hereby certify that this document and its attachments are being deposited with the United States Postal Service "Express Mail" service, as Express Mail No. 16P-21643114 in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 on this 29 day of November, 1996.

*Judy Kruger*  
Judy Kruger

**SECOND DECLARATION UNDER 37 C.F.R. §1.132**

I, John Schiek, declare that:

1. I am the vice president of Schiek Sports, Inc. ("Schiek") and am over 21 years of age. The subject invention was assigned to Schiek on June 20, 1992, and a copy of the assignment was mailed to the United States Patent Office on July 6, 1992 for filing. Schiek is a Wisconsin corporation having its place of business at 2010 S. Oakwood Rd., Oshkosh, Wisconsin 54903-3032. I am making this statement as evidence of commercial success of Applicant's invention ("the New Belt") and copying of Applicant's invention by Schiek's competitors.

**I. COMMERCIAL SUCCESS**

2. Since its introduction in 1991, sales of the New Belt have continued to rise even as sales in the overall belt industry have declined. The primary difference between the New Belt, which is sold by Schiek, and the support belts which are sold by Schiek's competitors (excluding competitors' copies of the New Belt) is the contoured shape of the New Belt.

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As described in the Specification of the above-referenced patent application, the narrowing of the New Belt along its sides prevents the New Belt from overlaying either a portion of the wearer's rib cage, pelvic bone, or both. When *combined with a widening* of the New Belt at the front, the intra-abdominal pressure is maximized. Because of these product differentiations, Schiek's market share has increased even though the belt industry as a whole has been contracting and companies similar to Schiek in size and market share have been closing. Taking into account lag time following its introduction, Schiek's sales of the New Belt have increased 9% while industry sales of belts without the contoured feature have decreased over 51%. Therefore, not only has Schiek enjoyed commercial success based on the sales of the New Belt, this success has come at a time when the rest of the support belt industry has been struggling. As described in more detail below, this success is due to the contoured feature of the New Belt and is not attributable to factors such as advertising, name and trademark recognition, or distribution networks.

3. In January 1991, Schiek formed for the purpose of selling high-end support belts to the athletic, industrial and medical industries. These belts were typically marketed through direct sales via trade shows and specialty retail outlets. The support belts were of the standard design of the time, namely 4-6 inch wide belts that wrapped around the abdomen of the wearer and were secured in the front with a standard buckle ("the Prior Art Belts"). It was not uncommon for the wider Prior Art Belts to overlay either a portion of the wearer's rib cage, pelvic bone, or both.

4. In August 1991, Schiek discontinued sale of the Prior Art Belts and began to exclusively market the New Belt. Since the introduction of the New Belt, Schiek has continued to exclusively market only the New Belt and has not marketed the Prior Art Belts. Attached as Exhibit A is a Schiek 1991 copyrighted advertisement describing the New Belt.

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5. In the industrial market, Schiek's New Belt is marketed and sold directly to the consumer via sales persons, safety and industrial trade magazines, and safety distributors. Typical customers include companies who employ persons for lifting heavy objects. In the athletic market, Schiek's New Belt is marketed and sold via high-end sporting goods stores and sporting magazines such as weight lifting and fitness magazines. Finally, in the medical market, Schiek's New Belt is marketed and sold directly to chiropractors.
6. Attached as Exhibit B is a breakdown of the number of units, i.e., support belts, sold by Schiek since beginning business in 1991 through the year ending 1995. The total number of belt sales in 1991 was 10,230; in 1992 was 26,983; in 1993 was 38,359; in 1994 was 38,019; and in 1995 was 41,802.
7. Attached as Exhibit C is a breakdown of the overall support belt market since January 1991 through the year ending 1995. Although the majority of support belt manufacturers are privately held companies whose sales figures are not publicly available, the figures of Exhibit C were derived from a market analysis report titled "Back Belts" compiled by John Alden Associates in 1994; a May 1995 article titled "Taking Stock of the Back Support Business" which appeared in Industrial News magazine; and a February 1996 article titled "Blind about Back Belts?" which appeared in Occupational Hazards magazine. A copy of each of these references is attached as Exhibit D.
8. Based on the above-referenced sales figures for the overall support belt market, the market has been in a declining trend since approximately 1993. Specifically, in the overall industry, support belt sales have *dropped approximately 51%* since the 1993 peak. In contrast, Schiek's sales of the New Belt have continued to increase since 1993, contrary to the trend in the industry. Specifically, Schiek's sales of the New Belt have *increased 9%* since 1993. Attached as Exhibit E is a graph which illustrates the trend in the support belt

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industry sales versus the trend in the sale of Schiek's New Belt.

9. Schiek's belts are sold to the high-end consumers of the support belt market. Accordingly, the average unit price of Schiek's New Belts has always been greater than the average unit price of the overall support belt market. In 1991, a Schiek New Belt sold for approximately \$32.33, while the average unit belt price of the overall market was \$25.00. In 1995, a Schiek New Belt sold for approximately \$26.53, while the average unit belt price of the overall market was \$13.00. Attached as Exhibit F are tables indicating the average unit sales price of the overall belt market between 1991 and 1995 and the average unit sales price of Schiek's New Belt for that same time period. Even as the price discrepancy continued to grow to its high in 1995 of approximately 104% between (1) a Schiek New Belt and (2) the average price of a belt in the overall market, Schiek's sales have continued to increase in a downwardly spiraling overall support belt market.
10. The graph of Exhibit E compares the trend in unit belt sales of the overall support belt market to Schiek's unit New Belt sales. Since the introduction of the New Belt in August 1991, Schiek's sales have continued to rise. In contrast, the overall unit sales of the industry have declined. Schiek's commercial success in the otherwise declining support belt industry is even more significant since the *price difference* has continued to *increase* between (1) the average unit sales price in the belt industry and (2) Schiek's average New Belt sales price. In other words, since 1991, while the support belt industry has dropped its average unit sales price by approximately 48% (to approximately \$13.00/ unit) and total unit sales in the industry have continued to decline, Schiek's unit sales have steadily increased, even though Schiek's unit sales price has only been reduced by 18% (to \$26.53 per New Belt).
11. Schiek's advertising costs have increased from approximately 2.46% of the net sales in 1991 to 6.10% of the net sales in 1995. These annual costs between 1991 and 1995 are

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attached in Exhibit G, and illustrated in the graph of Exhibit E.

12. Since 1991, the New Belt has been marketed by Schiek based on the contoured shape of the belt as described in the Specification of the above referenced patent application. The contoured shape of the New Belt and the results derived from the contoured shape have been the most significant selling feature of the belt. As mentioned above, Exhibit A illustrates sales pages from 1991 which depict the New Belt as it has been marketed and sold since that time.

13. The New Belt is not marketed or sold in combination with other products.

14. Name and trademark recognition do not have a large effect on the sale of Schiek's New Belt. As is evident from "Back Belts" attached in Exhibit D; Schiek's overall market share (approximately .5%); and Schiek's methods of distribution (no large retail outlets), product recognition based on Schiek's name is minimal. Marketing and sales are based primarily on the contoured feature of the New Belt.

15. As mentioned above in paragraph 12 and illustrated in Exhibit A, the New Belt described in the above referenced patent application is substantially the same as the New Belt as it is marketed and sold.

## II. COPYING BY SCHIEK'S COMPETITORS

16. As explained above, Schiek began marketing and selling the New Belt in August 1991. See sales brochures attached as Exhibit A with 1991 copyright notice. At that time, Schiek's competitors sold only the Prior Art Belts. Schiek's competitors did not begin to copy and sell the New Belt until 1993, following the decline in market sales of the Prior Art Belts. Therefore, until 1993, Schiek owned 100% of the New Belt market share.

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17. Belt's which have copied the contoured features of the Schiek's New Belt are sold by the following: OK1 Manufacturing Co. (Altus Athletics), Altus, OK, 73522, Model CB-5 (ECB-5); Ergodyne, 1410 Energy Park Drive, Suite 1, St. Paul, MN 55108, Model ProFlex 1500; Valeo, Waukesha, Wisconsin, Model VCR and VCC; and Grizzly Sporting Goods, a Division of Custom Leather Canada Ltd., 451 Philip Street, Waterloo, Ontario, Canada, N2L3X2, Model 8471 04.
18. Initially, in 1991 and 1992, Schiek's competitors down played the New Belt and its novel features. However, by 1993, Schiek's competitors had reversed their opinions of the New Belt, claiming that the shape "revolutionizes the weight lifter style belt." See Exhibit H, 1993 Ergodyne advertisement for ProFlex 1500 Back Belt. Although Ergodyne's advertisement appeared in 1993, most of Schiek's other competitors only began to advertise the New Belt in 1995 and 1996. For example, in the February 1995 issue of Occupational Health & Safety magazine, OK1 advertises a contoured belt such as the New Belt as a "NEW MODEL", while in the Spring 1995 Conney catalog, Ergodyne is still referring to the ProFlex 1500 Back Support as "revolutionary." In January 1996, Valeo advertises a Contoured Back support as a "NEW PRODUCT" in the Personal & Industrial Safety section of the Lab Safety Supply catalog, while in the Conney catalog of Spring 1996, OK1 continues to advertise the Contoured Back Support as a "NEW" product. A copy of each of these advertisements is attached in Exhibit H.
19. Further evidence of competitors copying can be inferred from OK1's 1994 catalog for Personal Ergonomic Products. Although the catalog is *bound* and contains a 1994 copyright notice, the advertisement for the CBS Contoured Back Support Belt is provided as a loose leaf addendum, suggesting its addition to the OK1 line some time after 1994. See Exhibit I.

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20. As mentioned in Paragraph 18, a contoured back support belt is advertised by Ergodyne and Ok1 in the Conney catalogs of 1995 and 1996, respectively, as a NEW product. Ironically, appearing on the same page of these advertisements is an advertisement for the Schiek New Belt. Thus, although an ergonomically contoured support belt is still considered NEW by Schiek's competitors in 1995 and 1996, Schiek has been marketing and selling the same belt since 1991.

### III. CUSTOMER AND EXPERT RESPONSE

21. Attached as Exhibit J are New Belt evaluations from customer's and experts in the support belt industry. As early as January 1992, experts in the industry began to recognize the uniqueness of Schiek's support belt design. See Midwest Muscle Bodybuilding Magazine, Vol. 4, No. 1. Another unsolicited article of praise is found in the unsolicited article entitled "Spinal Longevity" by John Abdo. Furthermore, product evaluation cards included with the New Belt have been returned by purchasers of Schiek's New Belt who have concluded that Schiek's belt is an "excellent design" and the manner in which the belt is designed to fit the human body is a "stroke of genius." Therefore, Schiek's evidence indicates that industry experts and customers alike appreciate the novelty in the ergonomic contours of Schiek's New Belt and that it is this feature that distinguishes the New Belt from the Prior Art Belts.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18



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of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

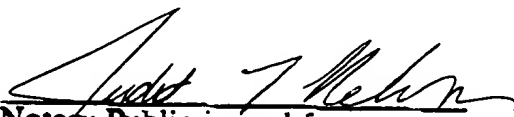
Signed this 26 day of March, 1996.

  
By: John Schiek  
Title: Vice President

THE STATE OF WISCONSIN )  
COUNTY OF Winnebago )

BEFORE ME, a Notary Public, on this day personally appeared John Schiek, known to me to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that John Schiek executed the same for the stated purposes.

GIVEN UNDER MY HAND AND SEAL this 26 day of March, 1996.

  
Notary Public in and for  
the State of Wisconsin

My Commission expires: Jan. 9 2000

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